

## REPORT SUMMARY

<b>CASE REFERENCE:</b> 5002/2024/TPO	
<b>ADDRESS:</b> The Old Mill House, Salts Lane, Loose, Maidstone Kent	
<b>RECOMMENDATION:</b>  <b>CONFIRM</b> Tree Preservation Order <b>No. 5002/2024/TPO</b> <b>WITHOUT MODIFICATION</b> as per the attached Order.	
<b>SUMMARY OF REASONS FOR RECOMMENDATION:</b>  The Council considers that the tree or trees contribute to amenity and local landscape character and it is expedient to make a Tree Preservation Order (TPO), due to the submission of a section 211 notice for their removal under application 23/503050/TCA.	
<b>REASON FOR REFERRAL TO COMMITTEE:</b>  One objection has been received to the making of the order	
<b>PARISH:</b> Loose	<b>WARD:</b> Loose
<b>CASE OFFICER:</b> Paul Hegley (MBC)	<b>SITE VISIT DATE:</b> 26 <sup>th</sup> October 2023
<b>PROVISIONAL TPO MADE:</b> 04.01.2024	<b>PROVISIONAL TPO EXPIRY:</b> 04.07.2024
<b>PROVISIONAL TPO SERVED:</b> 04.01.2024	<b>TPO OBJECTION EXPIRY:</b> 01.02.2024

## RELEVANT PLANNING HISTORY

### Planning:

**15/509942/TCA** - Trees in conservation area notification - crown lift to six metres one Ash and one Sycamore. Fell - one Elder - **No Objection** - **07.01.2016**

**17/506199/TCA** - Conservation area notification to fell one Silver Birch. Reduce height of one Weeping Willow to 25 ft . Remove all long thin growth from top of trunk of one Walnut tree. - **No Objection** - **08.01.2018**

**18/505377/TCA** - Conservation area notification to reduce size of 3 x Willows trees as shown on sketch plan. - **No Objection** - **22.11.2018**

**19/505654/TCA** - Conservation Area Notification to Fell 1x Ash, 1x Conifer and 1x Sycamore - **No Objection** - **23.12.2019**

**23/503050/TCA** - Conservation area notification to fell one Weeping Willow (T1), two Lawson Cypress (G1), fifteen Leylandii(G3) and coppice 8 Sycamore (G2). - **Part Permitted Part Refused** - **04.01.2024**

**TA/0164/11** - Conservation area notification: Loose Valley conservation area notification of intention to crown reduce 2No: weeping willows by one-third and crown lift them to 5.5m; cut back 3No: willows to previous pollard points; pollard 1No: nut tree to ground level; and fell 11No: conifers, 1No: walnut and 1No: silver birch - **No Objection** - **05.01.2012**

**TA/0076/11** - Conservation Area notification: Loose conservation area notification of intention to cut back one large branch growing out over drive and garage. - **No Objection** - **22.07.2011**

**TA/0137/13** - Conservation area notification: Loose Conservation Area notification of intention to reduce height of 1No. Weeping Willow to a height of 4.5m above ground level and to Crown reduce 1No. Weeping Willow by 20% - **No Objection** - **31.10.2013**

**Enforcement:**

**23/500734/TREEP2** - Enforcement Enquiry - **Pre Application Advice Closed** - **22.12.2023**

**Appeals:**

None

**MAIN REPORT**

**1. INTRODUCTION AND BACKGROUND**

Following the submission of a 6 week notification (section 211 notice) under application 23/503050/TCA to fell the two Cypress trees within Loose Conservation Area, Maidstone Borough Council made provisional Tree Preservation Order No. 5002/2024/TPO on the 04.01.2024, in order to prevent the felling from taking place. A copy of TPO No. 5002/2024/TPO is attached at Appendix A of this report.

**2. DESCRIPTION OF TREES**

2.01 Both Lawson Cypress are growing within the front garden of the property of Old Mill House and are visually prominent from Salts Lane. The approximate position of the two trees can be seen circled in yellow on the aerial extract below taken from Google Maps.



### **3. OBJECTIONS**

3.01 One objection has been received from the owner of the trees to the making of the TPO, who commissioned a report from an independent qualified Landscape & Ecology Consultant, the details of which have been summarised below.

3.02 Objections Summary:

I have assessed the two trees in the context of the Tree Evaluation Method (survey data sheet & decision guide) submitted by Maidstone Borough Council, dated 26.10.2023 and in particular with regard to the juxtaposition of the two trees with the adjoining residential property, the historic setting and the adjacent stream.

#### **Part 1: Amenity Assessment**

##### **a). Condition and Suitability for TPO**

I have assessed the two trees as being of Fair/satisfactory condition (3 points), rather than Good condition (5 points) as assessed by MBC.

The condition of the two trees should be downgraded on account of:

- the occurrence of current and former dieback in T1 in particular (see Photos 4 and 5 attached),
- the excessive growth resulting in the need for the trees to have lateral growth regularly pruned back to prevent interference with the adjacent house, path and driveway,
- the close proximity of the two trees to each other, compromising the structure of each tree, restricting the canopy spread of each tree and increasing suppression of each tree canopy. This suppression will increase with time.

NOTE. The plan accompanying the TPO is diagrammatic and does not accurately indicate the true extent of tree canopy spread of T1 and T2 and their extreme proximity to the house and stream.

The trees were evidently originally planted by the previous owners of the Old Mill House as small specimens, appropriate to the garden setting. It is considered most unlikely that the design intent was ever for the trees to become increasingly dominant over the adjacent house and historic mill setting and to jeopardise the integrity of the building. This exceptionally fast growing and recently introduced coniferous species is considered intrinsically unsuited to an ecologically sensitive and historically valuable riparian setting and should be removed to enhance the visual amenity of the area and the local landscape character, neither of which are enhanced by the presence of these two over-bearing tree specimens.

Timely removal is also necessary before any evident damage to the historic Old Mill House occurs as a result of root penetration, encroaching tree canopy and/or storm damage/wind throw.

##### **b). Retention span (in years) & suitability for TPO**

I have assessed the two trees as having a maximum retention span of 10-20 years (1 point) and possibly less (see below, 0 point), rather than the 20-40 years (2 points) as assessed by MBC. MBC have noted that the trees are 'close to the house but thought to be in context'.

I would disagree and consider that due to the high growth rates of Lawson cypress, the fact that the trees are already significantly taller than the adjacent house (see Photos 1 and 2 attached) and are already infringing on the curtilage of the house (see Photo 3), the trees will increasingly conflict with and compromise the integrity of the Grade 2 Mill House. It should be noted that in recent years the dense lower canopy of T1 in particular (closest to the house) has been subject to regular cutting back, with further

cutting back of both trees to permit access to the property along the drive. In the absence of the regime of regular pruning and if the natural growth trajectory of the tree canopy was extended, the tree canopy would already be infringing on the house itself, causing damage and preventing access to the property. It is also likely that the tree root plate is already affecting the house foundations.

The Root Protection Area (RPA) of T1 has been estimated as  $800$  (trunk diameter at 1.5m above ground level, =800mm)  $\times 12 = 9.6\text{m}$ . The tree trunk is located some 7m from the house wall and therefore it can be expected that the tree roots are already extending significantly under the foundations of the historic Old Mill House. This is of significant concern.

The trees are thought to have been planted as small specimens some 50 years ago and have already attained a height of some 15-16m and canopy spread in excess of 7m. Lawsons cypress are relatively recently introduced to the UK and are thought to reach heights of 45m, with an annual extension growth of 300-500mm. In this respect it is not considered feasible from a H&S viewpoint regarding proximity to the house, to allow these trees to continue growing beyond 20 years (at which stage the trees might be expected to increase in height and spread by a further 6-10m). Within 20 years it might also be expected that the two adjoining trees would suffer further dieback and suppression, compromising tree health and structural stability. In addition, the root growth would also likely interfere with the house foundations and extend further under the Old Mill House, compromising the structural stability of the historic property and causing potential nuisance and danger.

NOTE. It could also be argued that the retention span should actually be less than 10 years (0 points) as this category '....includes trees that are an existing or near future nuisance, including those clearly outgrowing their context...'

### **c). Relative public visibility & suitability for TPO**

| agree with MBC that the trees are 'Large trees or medium trees clearly visible to the public (4 points)'.

### **d). Other factors**

| have assessed the trees as 'Trees with none of the above additional redeeming features' (1point), rather than the 'Trees of particularly good form, especially if rare or unusual' (2 points) that MBC have attributed to the trees.

The form of the trees is not particularly good as due to their close proximity to each other (approx.. 4m) the canopies of the two trees are interfering with each other causing suppression and unbalanced tree structure. In addition, as noted above, due to the close proximity of the outgrown trees to the house, drive and path, the shape of the lower canopy has already been subject to regular (at least annual) pruning back, compromising the natural form of the trees and causing a 'boxy', unnatural shape.

Lawson cypress is not a 'rare or unusual' variety of tree and is in fact a very common and over-used garden conifer and has the reputation of being a 'nuisance' species (subject to the High Hedges legislation) frequently outgrowing its allotted space and causing problems due to interference with the built environment, including adjacent dwellings. The root plate of this introduced species is also frequently known to interfere with foundations.

Any lack of stability combined with storm damage could cause significant damage to the adjacent house, nearby stream, Salts Lane and any inhabitants of The Old Mill House and/or users of the lane.

## **Part 2: Expediency assessment**

I agree that the expediency criteria is 'Precautionary only' (1 point).

NOTE. However, as qualification for this Part 2 category requires trees to have already accrued at least 10 points, whereas my assessment of the trees totals only 8 or 9 points, they therefore do not actually qualify for this additional point.

## **Part 3: Decision Guide**

The MBC total score is 14 points - ie in the 12-15 category - 'TPO defensible'.

My independent assessment results in a total score of 8-9 points (excluding the additional point for Part 2 as they do not qualify for this, see above) ie the tree evaluation score is within the 7-11 category - 'Does not merit TPO'.

It is therefore concluded that due largely to the extreme proximity of T1 and T2 to the Grade 2 listed house, combined with the high growth rates of this fast growing, visually inappropriate, introduced species of conifer, the necessity for regular pruning back of the tree canopy to prevent physical infringement on the house, the existing evidence of suppression and dieback and the intrusion of the tree RPA under the curtilage of the historic Old Mill House, these trees do not merit TPO. There is concern over current and future nuisance caused by the trees and potential for H&S danger to humans and danger to the adjoining house, stream and lane if the trees are retained in situ in the future.

## **4. REPRESENTATIONS**

4.01 No other representations have been received to the making of the TPO.

## **5. APPRAISAL**

2no. Lawson Cypress listed T1 & T2 in TPO:

5.01 Condition:

**Good** – No significant defects noted.

5.02 Contribution to public amenity:

**Good** – Clearly visible to the public.

5.03 Retention/Longevity:

**Long** – With an estimated remaining life expectancy of at least 20 years.

5.04 Comments/Considerations:

At the time of inspection by the Council's arboricultural consultant on 29<sup>th</sup> May 2024, the two Lawson Cypress trees did not reveal any significant defects to suggest they are either unhealthy or unsafe. Both trees form a cohesive group that contribute positively and significantly to the mature and verdant landscape of the area and to its character and appearance as seen in photo 1 below.



**Photo 1** – View of Lawson Cypress T1 & T2



## RESPONSE TO OBJECTIONS

- 5.05 Having considered the points raised in the objection in section 3 of this report and following a further inspection of the trees on the 29<sup>th</sup> May 2024, I would respond to each point as follows:

### **Part 1: Amenity Assessment**

#### **a). Condition and Suitability for TPO**

As detailed in the appraisal at section 5 above, at the time of the Council's most recent inspection of the two Cypress trees on 29<sup>th</sup> May 2024, no obvious defects were noted to indicate they pose an abnormal safety risk. Therefore, the proposed grading of the two trees condition as a 5 "Good", at the time of making the TPO is considered to be justified.

The former dieback noted on T1 in the objection is in fact where areas of foliage have been trimmed back in the past exposing the inner dead foliage. Should the owner be concerned about the trees' close proximity and the need for the trees to be regularly pruned back then the Council would support ongoing trimming works via the submission of a suitable written TPO application.

### **b). Retention span (in years) & suitability for TPO**

Trees are living dynamic organisms that are subject to change at any time but based on their current age, condition, visual contribution they make to the public realm and location the original retention span of 20-40 years is considered to be appropriate in this instance.

It is accepted that the trees are in close proximity to the property, particularly the crown of T1. However, as previously mentioned above any interfering growth can be addressed by the submission of a pruning application which if applicable the Council is likely to support.

In terms of the trees' impact over the continued structural integrity of the property, to date no evidence has been provided to suggest/indicate the roots of the trees pose a risk. Again, should evidence be provided then such matters can be dealt with via an application.

### **c). Relative public visibility & suitability for TPO**

There is no dispute over the Councils grading that the trees are 'Large trees or medium trees clearly visible to the public (4 points)'.

### **Part 2: Expediency assessment**

There is no dispute over the Councils grading that the expediency criteria is 'Precautionary only' (1 point).

### **Part 3: Decision Guide**

In accordance with the current TPO guidance, the Councils total score of 14 points - ie in the 12-15 category - 'TPO defensible', is considered to give a realistic and balanced view of the two trees current amenity based on the TEMPO system of evaluating a trees suitability for inclusion within a TPO.

## **6. CONCLUSION**

- 6.01 The objections raised by the owner are not considered sufficient reasons not to confirm the TPO or raise sufficient doubt to question its validity or that of the TEMPO a assessment undertaken at the time of the orders making. The two Lawson Cypress trees are considered to have significant amenity value, so their loss would erode the mature and verdant landscape of the area by a marked degree and would thus give rise to significant harm to its character and appearance. Therefore, it is considered expedient to confirm TPO 5002/2024/TPO to secure the two trees long-term retention/protection.

## **7. RECOMMENDATION**

- 7.01 CONFIRM** the Tree Preservation Order **No. 5002/2024/TPO WITHOUT MODIFICATION** as per the attached Order.

**Case Officer:** Paul Hegley (MBC)

**Date:** 28.05.2024

*Note: Tree Officer assessments are based on the condition of the trees on the day of inspection. Whilst every effort is made to ensure that the assessments are accurate, it should be noted that the considerations necessary for determining applications/notifications may be able to be made off-site and, in any case, no climbing or internal inspections or excavations of the root areas have been undertaken. As such, these comments should not be considered an indication of safety.*

**COPY OF TPO No 5002/2024/TPO**

**Tree Preservation Order**

**Town and Country Planning Act 1990**

**The Tree Preservation Order No.5002/2024/TPO**

**Location: The Old Mill House Salts Lane Loose Maidstone Kent ME15 0BD**

The Maidstone Borough Council in exercise of the powers conferred on them by section 198 of the Town and Country Planning Act 1990 make the following Order—

**Citation**

1. This Order may be cited as Maidstone Borough Council Tree Preservation Order No. 5002/2024/TPO- The Old Mill House Salts Lane Loose Maidstone Kent ME15 0BD.

**Interpretation**

2. (1) In this Order “the authority” means the Maidstone Borough Council  
(2) In this Order any reference to a numbered section is a reference to the section so numbered in the Town and Country Planning Act 1990 and any reference to a numbered regulation is a reference to the regulation so numbered in the Town and Country Planning (Tree Preservation)(England) Regulations 2012.

**Effect**

3. (1) Subject to article 4, this Order takes effect provisionally on the date on which it is made.  
(2) Without prejudice to subsection (7) of section 198 (power to make tree preservation orders) or subsection (1) of section 200 (tree preservation orders: Forestry Commissioners) and, subject to the exceptions in regulation 14, no person shall—
  - (a) cut down, top, lop, uproot, wilfully damage, or wilfully destroy; or
  - (b) cause or permit the cutting down, topping, lopping, uprooting, wilful damage or wilful destruction of,

any tree specified in the Schedule to this Order except with the written consent of the authority in accordance with regulations 16 and 17, or of the Secretary of State in accordance with regulation 23, and, where such consent is given subject to conditions, in accordance with those conditions.

**Application to trees to be planted pursuant to a condition**

4. In relation to any tree identified in the first column of the Schedule by the letter “C”, being a tree to be planted pursuant to a condition imposed under paragraph (a) of section 197 (planning permission to include appropriate provision for preservation and planting of trees). This Order takes effect as from the time when the tree is planted.

Dated this 4th day of January 2024

*R. LL. Jarman*

Authorised Officer to sign in that behalf  
Rob Jarman  
Head of Development Management  
Maidstone Borough Council



**SCHEDULE**

**Specification of Trees**  
**5002/2024/TPO**

**The Old Mill House Salts Lane Loose Maidstone Kent ME15 0BD**

**Trees specified individually**

(encircled in black on the map)

<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>
T1	Lawson Cypress	Within the garden of Old Mill House
T2	Lawson Cypress	Within the garden of Old Mill House

**Trees specified by reference to an area**

(within a dotted black line on the map)

<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>
NONE		

**Groups of trees**

(within a broken black line on the map)

<i>Reference on map</i>	<i>Description</i> <i>(including number of trees</i> <i>of each species in the</i> <i>group)</i>	<i>Situation</i>
NONE		

**Woodlands**

(within a continuous black line on the map)

<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>
NONE		

